IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1138 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
JANUARY 27, 2006.

Heard Shri Thakare, learned counsel for the petitioners and Shri Mujumdar, learned counsel for the respondents.

In this writ petition under Articles 226 and 227 of Constitution of India, the petitioners have challenged the order passed by the Additional Commissioner dated 21.2.2005 in review rejecting it and maintaining the earlier order dated 18.1.2005 passed by same authority in Revision Appeal No.5/MNL-37/2004-05 as also the order of Additional Collector dated 30.6.2004. It appears that the proceedings were initiated against the present petitioners before the Tahsildar under Section 48(7) of Maharashtra Land Revenue Code, 1966, for illegal mining of about 19375.50 cubic meters of

miner minerals. The Tahsildar after hearing petitioners, worked out the amount payable in this respect at Rs.61,62,300/- with penalty of Rs. 3,42,350/- and the petitioners were directed to pay that amount. The said order dated 22.10.2003 of Tahsildar was challenged by the petitioner in appeal before the Collector and thereafter in revision before the Commissioner as mentioned above.

Shri Thakare, learned counsel for the petitioners has raised the contentions as under :

1. The signatures of petitioners were obtained by force on 22.10.2003 all at one time. He further states that the site was not inspected by the Surveyor and the report of Surveyor prepared is incorrect. He invites attention to the dates of communication in this respect forwarded by the Deputy Director of Mining and Geological Department to the Revenue authorities and also to the report of Surveyor which according to him is dated 21.10.2003. He argues that a report of later date could not have been reflected in a communication forwarded earlier. He further argues that powers under Section 48(7) of the Maharashtra Land Revenue Code are to be

exercised by Collector only and not by Tahsildar.

2. Shri Mujumdar, learned AGP, on the other hand, invites attention to the original order sheets maintained by the Tahsildar in this respect to show that the present petitioners were available and present before Tahsildar on 9.10.2003 and thereafter on 10.10.2003 and 21.10.2003. On 21.10.2003, the matter was closed for orders. On 22.10.2003, the orders were passed and the Tahsildar directed the notice to communicate the same to the present petitioners. On 27.10.2003, the petitioners appeared before the Tahsildar through their Advocate and sought time to deposit the amount. The date 10.10.2003 was fixed on 9.10.2003 and as petitioners were present, the same was not communicated to them but their signature was obtained in margin of the said order sheet by the office of the Tahsildar in token of having noted that date and accordingly on next date i.e. 10.10.2003, the petitioners appeared before the said authority. On that date, the report from the Director of Geological Survey was called and on 20.10.2003 it was received and notice was then ordered to be issued to the petitioners for

21.10.2003. On 21.10.2003, the petitioners have appeared and Tahsildar has recorded their statement.

The learned counsel for petitioners was specifically asked to point out the first available opportunity when he made grievance about the authorities forceably obtaining their signatures. The learned counsel has invited attention to writ petition but he could not point out any such grievance made either before Tahsildar immediately on 22.10.2003 or 27.10.2003 or any other dates on which matter was fixed. No such grievance could be pointed out even from appeal or revision. Thus, this defence that authorities obtained the signature forceably cannot be accepted particularly when the grievance about malafides of any particular officer has not been made by the petitioners. The grievance about the report by the Surveyor also appears to be misconceived. The learned counsel is not in a position to point out as to when he made the grievance about the Surveyor not visiting the site.

The learned AGP has pointed out that the petitioners moved application on 22.10.2003 itself for grant of certified copies and said

certified copies were given to them on 30.10.2003. In all total 9 certified copies are given to him. The said certified copies are their statement dated 10.10.2003 and 21.10.2003, Statement of Vinay Oberoi, Mauka Panchnama, List of Road, letter from Nagar Bhumapan i.e. Survey Officer dated 18.10.2003, letter from Mining department dated 20.10.2003, map of measurement done by Mining office together with area where excavation is done and then letter from Surveyor dated 21.10.2005 and all order sheets dated 9.10.2003 to 27.10.2003. Thus, the petitioners could have made grievance immediately thereafter either before Tahsildar or before the Collector.

The learned counsel has during argument has invited attention of this Court to writ petition to show the grounds raised before the Collector. The said ground also nowhere shows that signatures were obtained by force or the Surveyor did not visit the site at all. Thus, the ground is found to be incorrect.

The last argument is that the Tahsildar could not have exercised powers under Section 47(8) of the Code. The Commissioner has dealt

with this issue in his order and has found that on 10.5.1985, there is delegation in favour of Tahsildar. There is Notification dated 10.5.1985 by which the powers are delegated to Tahsildar. The petitioners have not challenged the said Notification at all.

It is thus clear that the petitioners have not been in a position to substantiate the grounds raised by them before this Court. No case is, therefore, made out for interference. Writ Petition is accordingly dismissed. No order as to costs.

JUDGE

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